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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF THE COMPETITION  
IN THE PROVISION OF ELECTRIC  
SERVICES THROUGHOUT THE STATE OF  
ARIZONA

Docket No. RE-00000C-94-165

**ILLINOVA ENERGY PARTNERS' EXCEPTIONS  
TO PROPOSED REVISIONS TO THE  
ELECTRIC COMPETITION RULES**

Illinova Energy Partners, Inc. submits the following exceptions to the Hearing Division's recommended order proposed revisions to the Retail Electric Competition Rules (R14-2-1601 *et seq.*):

1. **R14-2-1601(4)/R14-2-1604(G)**: The proposed deletion of the buy-through concept will unduly prevent Arizona consumers from access to market-based rates. Given the phase-in of true competition set forth in R14-2-1604, the buy-through option may allow some customers to reduce their energy costs prior to the January 1, 2001 date for full competition. The buy-through provisions should be retained.

2. **R14-2-1601(44)/R14-2-1617(A)**: The proposed addition in R14-2-1601(40) and R14-2-1617(A) may subject *out-of-state* utility companies that are not otherwise regulated by this Commission to the Affiliate Transaction Rule if they have an affiliated Energy Service Provider ("ESP") certificated in Arizona. This requirement is unnecessary and overly burdensome and probably prohibited by the Commerce Clause of the U.S. Constitution. Such out-of-state utilities are already subject to affiliate transaction rules in their own state that their public utility commission

1 believes are necessary to protect that state's ratepayers. For example, Illinova Energy Partners  
2 affiliate "UDCs" – Illinois Power – is already subject to Illinois' affiliate transaction rule. This  
3 Commission should have no interest in protecting those out-of-state ratepayers at the expense of  
4 competition in Arizona.

5 Moreover, a primary reason for implementing affiliate transaction rules is the concern that  
6 the presence of the incumbent monopoly utility in the same service territory as that utility's affiliate  
7 raises market power concerns because of the ownership ties and the pre-existing market dominance  
8 of the monopoly utility. The ESPs affiliated with non-Arizona utilities will be unable to exert  
9 market power in Arizona through their out-of-state "UDCs." For example, Illinova Energy Partners  
10 telling potential customers in Arizona that Illinois Power is its affiliate is unlikely to carry much  
11 marketing weight, although it would in Illinois.

12 Further, there is no reciprocity that justifies this proposal. APS' and TEP's marketing  
13 affiliates are not subject to other states' affiliate transaction rules. Likewise, Illinova Energy  
14 Partners and other ESPs trying to do business in Arizona should not have the extra potential burden  
15 of complying with Arizona Affiliate Transaction Rules.

16 3. **R14-2-1607(F)**: The modification proposed for the first sentence of this subsection  
17 creates ambiguity about the applicability of a CTC on a consumer that self-generates. Arguably,  
18 "any supplier" could include the customer itself because "supplier" is not defined. At a minimum,  
19 the sentence should be revised to read ". . . on all customers continuing to use the distribution system  
20 based on the amount of generation purchased *from an Energy Service Provider or Utility*  
21 *Distribution Company and transmitted over the distribution system.*"

22 4. **R14-2-1607(I)**: The provision adding securitization as a financing method for recovery  
23 of stranded costs raises the specter of something similar to the California Energy Bonds. Although  
24 customers in California enjoy a savings on energy costs, the bond surcharge on customers eliminates  
25 such "savings" and, in some instances, exceeds the "savings." This proposed addition should be  
26 rejected. At a minimum, such securitization should be allowed only *after notice and hearing*.



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2 Hearing Division  
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5 COPIES mailed February 17, 1999, to:

6 *All parties on the service list for*  
7 *Docket No. RE-00000C-94-165*

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